XII-189 (Jail) C. J. P. R.II-91

Cri Appeal 436 96 (2)

APPEAL OF PRISONER

CF0000059429

Division Bench (Criminal)

No. 832 Name सुन्दरलाल

Father's name रघु केवट उम्र- ५५ वर्ष

Residence रायकेरा 'मझापारा' P.S. घरघोड़ा रायगढ़

Sentenced to आजीवन कारावास by ~~मुख्य न्या० दण्डा० रायगढ़~~ सत्र न्यायाधीश, रायगढ़

Under Section 302 भा० दं० सं०

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ——→

2 Date on which copy received ——→

3 Date on which Appeal sent ——→

4 Whether the prisoner wishes to be represented or not. ——→

832 Name सुन्दरलाल

Confined in ~~जिला~~ Jail रायगढ़

No.- 2677 Dated 25-12-95 199

Forwarded to the ~~श्रीमान् मुख्य न्यायिक दण्डाधिकारी रायगढ़~~

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

निर्णय प्रतिलिपि - संलग्न ।

अधीक्षक
जिला जेल रायगढ़ (म.प्र.)

Date of receipt in Office with in time

Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Cri 100/96 Dated 4-1 1996

Forwarded to the Court of Sessions Judge, Raigarh
Criminal Appeal No. 436/95 Arising out of
Sessions Case No. 226/95 Arising out of
Crime No. 83/94 Police Station Gharghoda

Date of receipt in Appellate court

(सी. बी. बाजपेयी)
मुख्य न्यायिक दंडाधिकारी
रायगढ़ (म. प्र.)
[P. T. O.]

(13)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.436/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

6-3-2006

Mr. N.K. Chatterjee, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. the accused/ appellant has questioned legality and correctness of the judgment of conviction and order of sentence dated 18th December, 1995, passed by the Sessions Judge, Raigarh, in Sessions Trial No.226/94, whereby learned Sessions Judge after holding the accused/appellant guilty for commission offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that Tularam (PW-2), Village Kotwar, lodged the First Information Report (Ex.P-3) in Police Station: Tamnar to the effect that on 14-8-1994 at about 2 p.m. Sunderlal Nishad came to his house and informed that as Lakshmin Bai had refused to provide food to him, he has committed the murder of his wife Lakshmin Bai by attacking her with an axe on her neck and at the same time, the brother of Lakshmin Bai namely, Eshwar also came to his house and informed that the accused has committed the murder of her sister by attacking her with an axe on her neck, and she is lying dead in their house. Therefore, he along with Eshwar, Manohar - Up-Sarpanch, Jayaram - Sarpanch, Peetambar - Panch, Baldev Prasad & other villagers went to the house of Sunderlal and saw that

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CA 436/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Lakshmin Bai is lying dead in the pool of blood and there is mark of blood on the wall also. The blood was oozing out of the injury on the neck. Sunderlal is not in the house.

Receiving this report, the Station House Officer, Police Station: Tamnar, registered Crime No.32/94 under Section 302 of the I.P.C. and left for the scene of occurrence. He took into possession plain soil and blood stained soil from the place of occurrence under Ex.P-5. After giving notice Ex.P-6 to the Panchas, he prepared the Panchnama (Ex.P-7) of the body of Lakshmin Bai. The Patwari prepared the site plan (Ex.P-10) of the place of occurrence. Site plan Ex.P-12 was prepared by the Investigating Officer. The axe was taken into possession from the accused. The dead body of Lakshmin Bai was sent for post-mortem examination to Primary Health Centre, Tamnar, where Dr. A.K. Mishra (PW-1) conducted post-mortem on the body of Lakshmin Bai and opined that the death was on account of excessive haemorrhages leading to shock and the death could be caused by extensive injuries on the right side of neck & face. The death is homicidal in nature. The recovered axe was sent to the doctor for opinion and after examination, the doctor opined that the injuries sustained by Lakshmin Bai could be caused by the axe in question. Recovered articles were sent for examination by the Forensic Science Laboratory, Raipur, from where the report (Ex.P-17) was received. Even as per the Serologist's report, the axe in question was found stained with human blood.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Gharghoda, for commission of offence under Section 302 of the I.P.C. against the accused, who in turn committed the case to the Sessions Judge, Raigarh.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 436/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish charge against the accused examined as many as eight witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and he has been implicated in a false case. He examined two witnesses namely, Bundram (DW-1) & Mukundram (DW-2) in defence. However, learned Sessions Judge convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. N.K. Chatterjee, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

The homicidal death of Lakshmin Bai is not in dispute.

As far as involvement of the accused/appellant in committing the murder of Lakshmin Bai is concerned, the case rests on the circumstantial evidence. In a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

The prosecution has tried to establish crime against the accused on the following circumstances: -

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 436/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1. that, the accused was last seen with deceased Lakshmin Bai by Eshwar (PW-3), when she was alive; and
2. that, the accused made extra judicial confession before Tularam (PW-2).

First circumstance: -

As far as the first circumstance is concerned, it is admitted position that the accused on the date of offence was residing with his deceased wife Lakshmin Bai in his in-laws house. Eshwar (PW-3) is brother-in-law of the accused who has stated in his evidence that on the fateful day at about 2 p.m. he was sitting in the Varandah of his house, the accused and the deceased were also sitting with him and his sister Lakshmin Bai went inside the house, thereafter, the accused also followed her. After some time, the accused came out of the house and went running, therefore, he went inside and saw that his sister Lakshmin Bai was lying dead in the room, there were injuries on her neck and hand was also broken. Therefore, he called Pitambar & Hariram, they saw the dead body of Lakshmin Bai. Thereafter, Manohar, Baldev, Jayram – Sarpanch etc. came and they also saw the dead body of Lakshmin Bai. Thereafter, he called Kotwar Tularam who came to the place of occurrence and lodged the report in the Police Station.

In cross-examination of this witness {Eshwar (PW-3)}, defence has not been able to elicit any circumstance, which makes the evidence of this witness unreliable or untrustworthy. Being brother-in-law of the accused his presence in the house at the fateful time is but natural and he has stated in his evidence that just before the commission of offence the accused, the deceased (his sister) and he, all the three were sitting in the Varandah of the house, first the deceased left and went inside the house, thereafter, the

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक C.A.436/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused followed her and however, after some time, the accused came running out of the house and went out of the house. Therefore, he went inside and saw that his sister was lying dead and there were injuries on neck & hand and blood was oozing out of the injuries. He immediately informed the villagers they gathered and saw. Thereafter, the Kotwar was called and the matter was reported to the Police within a gap of two hours, whereas, the distance of the Police Station is about 13 kms. from the place of occurrence and the F.I.R. finds the name of the accused and the manner in which the accused assaulted the deceased. Therefore, prompt lodging of the F.I.R. further establishes the fact that this witness saw the accused and the deceased together and the dead body of Lakshmin Bai was found within no time.

In the circumstances, this circumstance is independently conclusive of the proof that the accused was the author of the crime in question.

Second circumstance: -

As far as this circumstance is concerned, Tularam (PW-2) has stated in his evidence that on the fateful day at about 2-2.30 p.m. he was sitting in his house, at that time, the accused came and said that he has committed the murder of Lakshmin Bai by attacking her with axe on her neck and he said that he should accompany him to the Police Station. In the mean time, Eshwar (PW-3) came to his house and informed about the death of his sister on which he went to the house of Eshwar and saw the dead body of Lakshmin Bai. Axe, the weapon of offence was lying near the door of the room where the body of the deceased was lying. He immediately went and lodged the report (Ex.P-3) in the Police Station.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.436/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	- 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Before relying on the extra judicial confession, the Court is required to ascertain that the extra judicial confession must be voluntary, prompt and true. From the evidence of this witness {Tularam (PW-2)} it is established that the extra judicial confession made by the accused before this witness was voluntary, true and prompt because, the report was lodged within no time by this witness and the F.I.R. finds the name of the accused wherein the manner in which the accused assaulted Lakshmin Bai is also mentioned. Moreover, as per the medical report also the injuries which were mentioned in the F.I.R. were found on neck & hand of the deceased and there is no reason for this witness to implicate the accused in a false case. Therefore, it is established that the extra judicial confession was made by the accused before this witness.

In view of the above discussion, the prosecution has been able to establish the crime in question against the accused based on the circumstantial evidence and from the above evidence it is established that the accused was the author of the crime in question.

In the result, there is no merit in this appeal, same is liable to be dismissed and it is accordingly, dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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21.2.06